

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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COMMUNICATIONS DIVISION
U.S. DEPARTMENT OF THE SECRETARY

In the Matter of

**Application of SBC Communications Inc.,
Southwestern Bell Telephone Company,
And Southwestern Bell Communications
Services, Inc. d/b/a Southwestern Bell Long
Distance for Provision of In-Region
InterLATA Services in Texas**

CC Docket No. 00-65

**EXHIBITS TO THE SUPPLEMENTAL COMMENTS OF AT&T CORP.
IN OPPOSITION TO SBC's SECTION 271 APPLICATION FOR TEXAS**

VOLUME 4

Filed: April 26, 2000

**APPENDIX TO SUPPLEMENTAL COMMENTS OF AT&T CORP. IN
OPPOSITION TO SBC's SECTION 271 APPLICATION FOR TEXAS**

CC Docket No. 00-65

EXH.	DECLARANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
A	Sarah DeYoung/Mark Van de Water	UNE Loop Provisioning—Hot Cuts	§ 271(c)(2)(B)(ii), (iv), (xi)
B	Julie S. Chambers/ Sarah DeYoung	Operations Support Systems	§ 271(c)(2)(B)(ii), (iv), (x)
C	C. Michael Pfau/ Julie S. Chambers	xDSL	§ 271(c)(2)(B)(ii), (iv); § 271(d)(3)(C)
D	A. Daniel Kelley/ Steven E. Turner	Public Interest—Scope and Nature of Local Competition	§ 271(d)(3)(C)
E	C. Michael Pfau	Performance Measurements	§ 271(c)(2)(B)(i), (ii); § 271(d)(3)(C)

MISCELLANEOUS APPENDIX

EXH.	DOCUMENT
F	SBC-ASI Agreement on Interim Line Sharing, available at www.sbc.com
G	Southwestern Bell Telephone Company's Brief on Phase I Issues, in <u>Complaint of AT&T Communications of the Southwest, Inc., et al. Against Southwestern Bell Tel. Co. To Eliminate Non-Recurring Charges</u> , Docket Nos. 21622, 22290 (Texas PUC filed Apr. 5, 2000)

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of
Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, And)
Southwestern Bell Communications Services, Inc.) **CC Docket No. 00-65**
d/b/a/ Southwestern Bell Long Distance For Provision)
of In-Region, InterLATA Services)
In Texas

SUPPLEMENTAL DECLARATION OF

A. DANIEL KELLEY

AND

STEVEN E. TURNER

ON BEHALF OF

AT&T CORP.

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of In-Region, InterLATA Services)
In Texas

A. Daniel Kelley and Steven E. Turner do hereby depose and state as follows:

1. My name is A. Daniel Kelley. I am Senior Vice President of HAI Consulting, Inc. (formerly Hatfield Associates, Inc.). My relevant experience and education are described in our Declaration filed in FCC CC Docket No. 00-04 on January 31, 2000.

2. My name is Steven E. Turner. Currently, I head my own telecommunications and financial consulting firm, Kaleo Consulting. My relevant experience and education are described in our Declaration filed in FCC CC Docket No. 00-04 on January 31, 2000.

3. We have prepared this Declaration at the request of AT&T Corp. The purpose of the Declaration is to assess the current state of local competition in Texas and to respond to claims by Southwestern Bell Telephone Company ("SWBT") and its witness John S. Habeeb

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that SWBT faces widespread local exchange service competition. In his most recent affidavit, Mr. Habeeb claims that “competition in local telephone service is flourishing in SWBT’s serving area in Texas” and that this competition “demonstrate[s] a level of competitive penetration unequalled by even Bell Atlantic-New York.” Habeeb Supp. Aff. ¶ 3.

4. These claims are demonstrably false. No competing carrier is currently mass marketing to residential customers throughout Texas utilizing its own facilities, or even unbundled network elements (“UNEs”) purchased from SWBT. In contrast, at least three carriers are mass marketing such services to customers throughout New York State. Mr. Habeeb’s claim that local competition is greater in Texas than in New York is belied by the fact that the growth in UNE-Platform (“UNE-P”) lines – currently the principal vehicle for residential service – is over five times greater in New York than in Texas. The market penetration statistics presented here confirm continued domination by the incumbent. These statistics show that the vast majority of customers in Texas have no choice of local carrier other than SWBT. There is very little facilities-based competition in Texas. For almost all Texas residential customers and for nearly 90% of the state’s businesses, SWBT facilities are being used to provide local telephone service. Even the limited amount of competition for business customers is generally confined to downtown urban areas. There is virtually no facilities-based competition for business customers outside of these areas, and almost none at all for residential customers in either urban or rural areas. The amount of UNE-based competition in Texas is negligible. CLECs service only about two percent of residential lines in Texas through their own facilities or UNEs obtained from SWBT. Finally, the relatively little existing local competition that exists in

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Texas today is extremely narrow in scope. Nearly 90% of the traffic handled by Texas CLECs is for a narrow category of customers -- Internet Service Providers.

5. Table 1 summarizes the key market penetration statistics for competitors providing service over facilities other than those obtained from SWBT.¹ Statewide, only about four percent of the local loops are provided by SWBT competitors. The share of facilities loops provided by competitors to residential consumers is a miniscule 0.2 percent – the same share competitors had in September 1999.

Table 1
Facilities Competition in Texas

	CLEC Lines	SWBT Lines ²	CLEC Penetration
Residence	12,103	6,521,581	0.2%
Business	423,778	3,364,999	11.2%
Total	435,881	9,886,580	4.2%

6. As summarized in Table 2, the use by competitors of unbundled loops, platform and resale is also limited. Only about 5.3% of the access lines in SWBT's service territories are being provided via resale or UNEs. And again, Texas residential customers have almost no competitive alternatives; competitors provide UNE-based service to only 1.8% of the residential lines in SWBT's service territories.

¹ We define "facilities" competition to be where loops are owned by competitors or obtained from carriers other than SWBT.

² The SWBT lines reflected in this declaration are as of September 1999 and are the same as those reflected in our prior declaration filed January 31, 2000. See Kelley/Turner Aff. ¶ 31. Accordingly, the CLEC penetration estimates contained in this declaration tend to be *overstated* because they do not reflect growth in SWBT lines since September.

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Table 2
Resale and UNE Competition

	UNE	Resale	SWBT Lines	CLEC Penetration
Residence	119,871	188,421	6,521,581	4.7%
Business	83,301	154,552	3,364,999	6.3%
Total	203,172	342,973	9,886,580	5.3%

III. CONTRARY TO SWBT'S CLAIMS THERE IS MINIMAL LOCAL COMPETITION IN TEXAS TODAY.

A. There Is De Minimis True Facilities-Based Competition In Texas.

1. SWBT's Methodology Systematically Overstates The Number Of Lines Served By Facilities-Based Competitors.

7. SWBT relies on the affidavits of John S. Habeeb to provide a calculation of the business and residential access lines in SWBT's territory served by "facilities-based" competitors (which Mr. Habeeb defines to include both pure facilities-based and UNE-based competitors) and resale CLECs in Texas.³ Mr. Habeeb estimates that, as of February 2000, CLECs serve 342,973 resold lines and 1,358,219 "facilities-based" lines. Habeeb Supp. Aff. ¶ 4. Of these, "facilities-based" lines, 203,172 are provided via UNEs leased from SWBT. Habeeb Supp. Aff. Attachment A. Accordingly, 1,155,047 (over 85%) of these "facilities-based" lines are derived from Mr. Habeeb's methodology for estimating such lines.

8. Mr. Habeeb concedes that "SWBT cannot provide an exact count of access lines served by CLECs over their own facilities. This information is known only by the CLECs

³ We will refer to the Habeeb Affidavit filed on January 10, 2000 as the "Habeeb Aff."; his Reply Affidavit filed on February 22, 2000 as the "Habeeb Reply Aff."; and his Supplemental Affidavit filed on April 5, 2000 as the "Habeeb Supp. Aff."

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themselves.” Habeeb Aff. ¶ 22. In order to *estimate* the number of access lines served by facilities-based CLECs, Mr. Habeeb multiplies the number of interconnection trunks to each CLEC’s switch by 2.75. Habeeb Aff. ¶ 27.⁴

9. As nearly every commentator in this proceeding has shown, Mr. Habeeb’s *assumption* that there are 2.75 access lines associated with *all* interconnection trunks, without any regard for how the trunks are used, leads to an enormous overstatement of access lines. See DOJ Evaluation at 9 & n. 15; MCI WorldCom Comments at 59-60; Sprint Comments at 75-76.⁵ This is so for at least two reasons. *First*, SWBT did not make any adjustment for the large quantity of Internet Service Provider (“ISP”) traffic that Texas CLECs terminate. As discussed in our prior declaration (Kelley/Turner Decl. ¶ 43), an overwhelming proportion -- 86.7 percent -- of local traffic for Texas CLECs is ISP traffic at present -- a fact that Mr. Habeeb does not contest.⁶ Because of the high utilization rates on ISP lines,⁷ CLECs presently require closer to one -- not 2.75 as Mr. Habeeb assumes-- ISP line equivalent per trunk. If they served three ISP

⁴ Mr. Habeeb reports that there are 420,017 interconnection trunks in SWBT’s territory. Habeeb Supp. Aff. Attachment A. Multiplying this amount by 2.75 results in an estimate of 1,155,047 lines -- 85% of the 1,358,219 facilities-based lines identified by Mr. Habeeb.

⁵ Although the Texas Public Utility Commission (“TPUC”) comments that “SWBT’s method of calculating the number of facilities-based customers appears reasonable” (TPUC Comments 102), it provides no analysis to support that conclusion which, in any event, conflicts with the TPUC’s acknowledgement that it “has no way of determining” whether the lower facilities-based lines directly reported by CLECs to the TPUC or the higher numbers of such lines estimated by SWBT are more accurate. *Id.* at 103.

⁶ See, e.g., Habeeb Reply Aff. ¶ 29.

⁷ In an *ex parte* presentation to the FCC, US West provided data showing that the holding times for Internet calls are *ten times* greater than the holding times for voice calls. See letter from Melissa Newman to Magalie Roman Salas, CC Docket No. 99-68, November 15, 1999, attachment p. 8. These longer holding times are among the factors necessitating the use of fewer lines per trunk for ISP traffic.

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lines on each trunk, CLECs would have insufficient trunk capacity to complete calls from SWBT due to the high utilization rates on ISP lines. *Second*, many CLECs are at the early stages of their network development, when they do not have the economies of scale to obtain the efficient trunk configurations SWBT currently enjoys.

10. Mr. Habeeb's attempt to defend his 2.75-lines-per-trunk assumption simply fails to come to grip with these points. For example, Mr. Habeeb cites SWBT's ratio of ten lines per trunk for its own PBX customers to justify his 2.75 figure. Habeeb Reply Aff. ¶ 9. He also claims repeatedly that a ratio of one line per trunk "would not be economically rational." *Id.* The SWBT figure is simply irrelevant given the vastly different stage of development of SWBT's and CLECs' networks.⁸ Moreover, when CLECs are at an early stage of growth, as they clearly are in Texas, they must build interconnection facilities between their switches and any SWBT switches to which they wish to interconnect. This build-out occurs prior to the addition of even a single line. Accordingly, it would not be uncommon for a CLEC early in its growth to have more trunks than lines. As more customers are accumulated behind a switching point over time, the ratio of lines to trunks can increase. As such, it would not be surprising for SWBT to experience a ratio of 10 to 1, whereas CLECs would have a significantly smaller ratio given their much smaller customer bases.

⁸ Presumably in recognition of this point, Mr. Habeeb states that "SBC's own CLEC operating in Plano has a 12 to one ratio of access lines to trunks." Habeeb Supp. Aff. ¶ 9. However, SBC's operations in Plano are not representative of a CLEC's entry into a new market. Based on Mr. Turner's conversations with SWBT personnel, we understand that SBC's entry into Plano has been through use of its existing switches. This approach permits SBC to utilize its existing trunking network, which is built on its already large base of customers. SBC only has to augment its trunking arrangements slightly to accommodate the additional customers in Plano.

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11. Mr. Habeeb's own data illustrate this point dramatically and also demonstrate the flaws inherent in his assumption of 2.75 lines per interconnection trunk. Mr. Habeeb reports that Golden Harbor, one of the facilities-based CLECs profiled in his initial affidavit, has [] trunks in Austin.⁹ Applying his standard assumption, Mr. Habeeb multiplies this trunk count by 2.75 yielding [] *estimated* facilities-based lines.¹⁰ Mr. Habeeb then apportions this line estimate between business and residential lines based on E911 listings. In Austin, Golden Harbor has [] business E911 listing and [] residential E911 listings.¹¹ Using his E911 methodology for dividing business and residential lines, Mr. Habeeb estimates that Golden Harbor is serving [] business lines in Austin (1/3 of [] and [] residential lines in Austin (2/3 of []).¹² In assessing the reasonableness of these figures, two points are critical: (1) Virtually every residential line will be associated with an E911 listing, so it is likely that Golden Harbor has only [] facilities-based residential lines in Austin -- not []; and (2) almost [] percent of the traffic between SWBT and Golden Harbor is ISP traffic, all of which is transmitted to the [] business line listed in E911.¹³ This error has great significance: Mr. Habeeb estimates that Golden Harbor serves over [] of the 73,619 residential facilities-

⁹ Habeeb Aff. ¶ 86, Table 13.

¹⁰ Since Golden Harbor does not have any Loop/Port combinations (*see* Habeeb Aff. ¶ 69), the estimated line count is simply the number of trunks times 2.75 lines per trunk.

¹¹ Habeeb Aff. ¶ 86, Table 13.

¹² Habeeb Aff. ¶ 28, Table 3.

¹³ Mr. Habeeb reports that of the [] of the total minutes between SWBT and Golden Harbor, Golden Harbor originated only []. Habeeb Aff. ¶ 69. The only possible explanation for this -- one which Mr. Habeeb has not contested -- is that almost [] percent [] of the traffic between Golden Harbor and Southwestern Bell in Austin is ISP traffic.

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based lines he has identified state-wide.¹⁴ This methodological problem taints nearly all of Mr. Habeeb's data and raises serious concerns about the usability of the data at all.¹⁵ The bottom line is that at the early stages of network development, the ratio of trunks to lines is an entirely unreliable predictor of the number of facilities-based lines that are being served by a CLEC particularly in light of the large percentage of ISP traffic that is being served by these newer CLECs.

12. Finally, Mr. Habeeb attempts to address the fact that nearly 90% of all local traffic handled by CLECs in Texas is for ISPs, by claiming that only "11 percent [37,000 out of 348,000] of all interconnection trunks provided to CLECs are used to serve ISP customers." Habeeb Reply Aff. ¶ 9. Mr. Habeeb's claim is belied by his own data. His claim is based on the premise that SWBT terminates approximately 500 million minutes of traffic each month to ISPs. Habeeb Reply Aff. ¶ 9. However, Attachment A to his Supplemental Affidavit shows that in December 1999 SWBT terminated 3.49 billion minutes of ISP traffic to CLECs and that in January 2000 SWBT terminated 2.03 billion minutes of ISP traffic to CLECs.¹⁶ The average number of minutes of ISP traffic to CLECs for these two months -- based on Mr. Habeeb's own

¹⁴ Habeeb Aff. ¶ 28, Table 3.

¹⁵ Although we pointed out these flaws in our prior declaration, Mr. Habeeb has not addressed the problems in either of his subsequent affidavits.

¹⁶ In Row 13 of Attachment A to Mr. Habeeb's Supplemental Affidavit, Mr. Habeeb reports that the total number of minutes "From SBC to CLEC ISP" for the period 1/1/97 - 11/99 was 17.11960 billion and the total for the period 1/1/97 - 12/99 was 20.60551 billion. The difference between these two figures, 3.48591 billion, is the minutes "From SBC to CLEC ISP" for December. Mr. Habeeb also reports that for the period 1/1/97 - 1/00, the usage figure was 22.63226 billion. Subtracting 20.60551 billion from this number yields 2.02675 billion minutes of ISP traffic to CLECs in January 2000.

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data -- is thus 2.76 billion minutes, not 500 million as Mr. Habeeb stated. If one applies Mr. Habeeb's assumption that each ISP line carries an average of 13,500 minutes per month (Habeeb Reply Aff. ¶ 9), over 204,000 CLEC lines would be used for ISP traffic. Assuming, as Mr. Habeeb does, that one trunk serves each ISP line (id.), approximately 204,000 trunks are used for ISP traffic -- not 37,000 trunks as reported by Mr. Habeeb.

2. Current Data Reflect The Minimal Levels Of CLEC Facilities Penetration

13. As the discussion above demonstrates, SWBT's methodology systematically overestimates the number of facilities-based CLEC lines in Texas. As Mr. Habeeb acknowledges, the "count of access lines served by CLECs over their own facilities . . . is known only by the CLECs themselves."¹⁷ As we described in our prior declaration, the TPUC has gathered CLEC line data from the CLECs themselves. We used these data to develop our original estimates of CLEC penetration for the state as a whole as well as for individual metropolitan statistical areas ("MSAs"). Kelley/Turner Decl. ¶¶ 27-35.

14. Mr. Habeeb claims that the TPUC data is unreliable because not every Texas CLEC reported to the TPUC. Habeeb Reply Aff. ¶ 7. To the contrary, the TPUC data covers all significant Texas CLECs. Thirty carriers responded to the TPUC survey, including the largest carriers in the state. Only two carriers listed in Mr. Habeeb's profiles of Texas carriers (Habeeb Aff. ¶¶ 45-78) did not respond to the survey (ETS and Level 3). According to Mr. Habeeb's own

¹⁷ Habeeb Aff. ¶ 22.

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data, these two carriers account for less than [] of the local exchange minutes passed by CLECs to SWBT customers.¹⁸

15. Because we believe the TPUC data provides a far more reasonable estimate of CLEC facilities in Texas than does Mr. Habeeb's flawed 2.75-lines-per-trunk assumption, for the purpose of this declaration, we have again used the TPUC data, reflecting CLEC facilities-based lines through September, 1999, and increased those lines by the growth rates for residential and business facilities lines that Mr. Habeeb reports for October 1999 to February 2000. This independent data check verifies that SWBT has exaggerated the amount of competition it faces and that there is little competition in Texas -- especially outside the largest metropolitan areas -- and that residential competition is particularly minuscule.

16. The statewide results for facilities competition are shown in Table 1 above. Facilities-based competition is quite small in Texas -- only about **4 percent statewide**.¹⁹ Facilities-based residential competition is virtually non-existent -- **0.2 percent statewide**. The distribution of facilities competition throughout the state is also of interest. As depicted in Table 3 below, the facilities competition is concentrated in the top three MSAs: Dallas, Fort Worth and Houston.

¹⁸ Habeeb Aff. ¶ 9 reports that CLECs passed 1.1 billion minutes of traffic to SWBT customers.

¹⁹ The data on "facilities-based" competition compiled by the HAI methodology do not include service provided through SWBT facilities, including UNEs.

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Table 3
Facilities Competition in Three Largest MSAs

	Dallas/Fort Worth/ Houston	Other Areas ²⁰
Residence	0.3%	0.1%
Business	13.8%	7.7%

B. UNE-Based And Resale Competition Also Remain Insignificant.

17. Table 2 above (p. 4, *supra*) shows resale and UNE penetration in Texas. The results are similar to those for facilities lines. Residential penetration -- just 1.8% for UNEs and 2.9% via resale is negligible, lagging well behind business penetration. Moreover, as reflected on Table 4 below, this negligible UNE-based and resale competition is focused in the three largest MSAs -- Dallas, Fort Worth and Houston.

Table 4
Resale and UNE Competition in Three Largest MSAs

	Res. UNE	Res. Resale	Bus. UNE	Bus. Resale	Total
Dallas/Fort Worth/Houston	2.8%	4.4%	2.7%	5.0%	7.4%
Other Areas	1.0%	1.6%	1.5%	2.8%	3.1%
Total	1.8%	2.9%	2.2%	4.1%	5.3%

18. One of the principal themes of SWBT's Section 271 application and Mr. Habeeb's affidavits is that local competition in Texas exceeds local competition in New York.²¹ This claim is false. The false nature of these claims is borne out by a comparison of UNE Platform ("UNE-P") entry in New York and Texas -- UNE-P being the principal means by which

²⁰ The MSAs included in "Other Areas" are provided in Attachment 3 of our prior declaration.

²¹ See e.g., Habeeb Supp. Aff. ¶ 3.

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CLECs are providing competitive residential service. Mr. Habeeb reports that the number of UNE-P lines increased from 125,572 to 203,172 from November 1999 to February 2000 -- a growth rate of about 19,500 lines per month.²² By contrast, Bell Atlantic publicly reported that the comparable figure for the same time period in New York was 554,000 lines or an average of 113,500 lines per month²³ -- or more than five times the growth rate occurring in Texas.

19. CLECs reselling SWBT service continue to represent the largest portion of "CLEC penetration" in SWBT's territory. However, as SBC itself has acknowledged, resale does not provide effective competition, but merely represents another marketing arm of SWBT.²⁴ This is so for numerous reasons including the facts that resale limits the new entrant to precisely the same service offerings as the incumbent and resellers can only provide price competition between the wholesale price they pay SWBT and the retail price SWBT charges its customers. Indeed, in Texas it appears that a significant percentage of resold lines represent service provided at rates *higher* than SWBT's retail rates to customers disconnected by SWBT for non-payment of bills.²⁵

²² Habeeb Supp. Aff. ¶ 5.

²³ Bell Atlantic Carrier to Carrier Reports for October 1999 – February 2000.

²⁴ Royce Caldwell, President – SBC Operations, conceded:

"Resale is not real competition. . . Resellers are nothing more than additional retail outlets for the network owned and operated by the facilities provider."

Testimony Before the Antitrust, Business Rights and Competition Subcommittee of the Senate Judiciary Committee, March 4, 1998.

²⁵ Jennifer Files, *The Dallas Morning News*, "Pay Now Call Later, (August 9, 1998)(reporting that about two dozen "prepaid operators," i.e., resellers who serve disconnected SWBT customers on a prepaid basis, account for at least one-third of the lines then served by CLECs).

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C. SWBT's Anecdotal Claims About CLEC Mass-Marketing Efforts Are Misleading.

20. In support of his claims about the pervasive nature of local competition, Mr. Habeeb makes assertions that various CLECs are "mass-marketing" their services in Texas. Habeeb Supp. Aff. ¶ 9. However, the attachments to Mr. Habeeb's affidavit demonstrate that his claims are overblown and misleading.

21. For example, Mr. Habeeb claims that "Sprint recently began a local service mass-marketing plan in Texas." Habeeb Supp. Aff. ¶ 9. However, in support of this claim, Mr. Habeeb attaches two newspaper articles, one stating that Sprint has "quietly begun" offering local service (JSH Attachment B-4) and the other stating that Sprint is only offering local service in six cities (JSH Attachment B-3). The only other "evidence" Mr. Habeeb provides is a letter that Sprint is apparently sending to its small base of long distance customers in Texas (JSH Attachment B-1). Such an effort does not constitute "mass marketing," but merely a defensive safeguard against premature long distance relief for SWBT.

22. In sum, no carrier is mass marketing local service in Texas. If Texas local

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markets were truly open, CLECs would be mass marketing across the state, rather than engaging in limited, target marketing efforts in a few, isolated cities.

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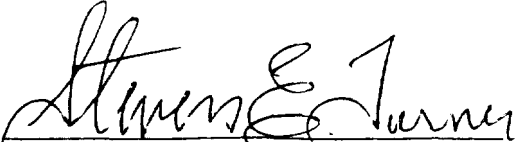
I declare under penalty of perjury that the foregoing is true and correct. Executed
on April 25, 2000.

A handwritten signature in dark ink, appearing to read "A. Daniel Kelley". The signature is written in a cursive, somewhat stylized font. The first letter "A" is large and loops around. The last name "Kelley" is written in a more fluid, cursive style.

A. Daniel Kelley

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I declare under penalty of perjury that the foregoing is true and correct. Executed
on April 24, 2000.


Steven E. Turner